
(2012) 08 CHH CK 0056
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 250 of 2006

Nandau @ Vansh Bahadur

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 201, 30, 302

Citation : (2012) 4 CGLJ 412

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Advocate : Rajkumar Gupta, for the Appellant; N.K. Mehta, Panel Lawyer, for the State, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Shri Sunil Kumar Sinha, J.—This appeal is directed against the judgment dated 28th of February, 2006 passed in Sessions Trial No. 321/2004 by the Additional Sessions Judge, Manendragarh, District Korea (C.G.). By the impugned judgment, the appellant has been convicted u/ss 302 & 201 IPC and sentenced to undergo imprisonment for life & to pay fine of Rs. 1,000/- and R.I. for 5 years & to pay fine of Rs. 500/- with default sentences under each count, with direction to run the sentences concurrently. The facts, briefly stated, are as under :--

Deceased- Sem Bai @ Kuderahain Bai was wife of Biran Singh (PW-3). Prior to 30.4.2004, Biran Singh (PW-3) had gone out of village. When he returned on 30.4.2004, his wife (deceased) was not present in the house. He was told by Faguni Bai @ Kuthadihain Bai (PW-2) that she had seen the appellant dragging his wife to his house and assaulting her. He then lodged First Information Report (Ex.-P/15) on 1.5.2004. Later on, the dead body of the deceased was found in village dam. Inquest (Ex.-P/3) was prepared and the dead body was sent for post-mortem. Post-mortem examination was conducted by Dr. M. Lal (PW-9). He opined that the cause of death was asphyxia due to strangulation and it was

homicidal in nature. The post-mortem report is Ex.-P/9. In further investigation, the appellant was taken into custody and his memorandum statement (Ex.-P/5) u/s 27 of the Evidence Act was recorded and one steel-water tank, allegedly belonging to the deceased, was seized at his instance vide seizure memo Ex.-P/6. The above article was put for identification on 17.7.2004 which was conducted by Mohd. Rafiq (PW-13) in which the steel tank was identified to be that of the deceased. The identification memo is Ex.-P/14. The prosecution came with the case that since the appellant was suspecting that the deceased was a tonahi (a lady who plays witchcraft), therefore, he dragged her to his house and committed her murder and thereafter threw her dead body in the dam. The two eye-witnesses namely-Munni Bai @ Dika Bai (PW-1) and Faguni Bai @ Kuthadihain Bai (PW-2) turned hostile. The learned Sessions Judge relied on the evidence of discovery & seizure of steel drum at the instance of the appellant, and taking assistance from the evidence of Biran Singh (PW-3), Rangi Lal (PW-4), Gokaran Singh (PW-5), Pongu (PW-7) and Ramgopal Singh (PW-8) recorded the finding that it was proved that the appellant had committed murder of the deceased and had thrown the dead body in the dam. The appellant, thus, was convicted and sentenced as above.

2. Mr. Rajkumar Gupta, learned Counsel appearing on behalf of the appellant, argued that the two eye-witness of dragging and assault have turned hostile; evidence of Biran Singh (PW-3), Rangi Lal (PW-4), Gokaran Singh (PW-5), Pongu (PW-7) and Ramgopal Singh (PW-8) are hearsay and based on evidence of Faguni Bai (PW-2) who had already turned hostile; the identification of the steel tank was not properly conducted and it was not established that the said tank was belonging to the deceased; therefore, the conviction cannot be sustained.

3. On the other hand, Mr. N.K. Mehta, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Sessions Court.

4. We have heard learned Counsel for the parties at length and have also perused the records of the sessions case.

5. We have gone through the evidence of Biran Singh (PW-3), Rangi Lal (PW-4), Gokaran Singh (PW-5), Pongu (PW-7) and Ramgopal Singh (PW-8). From their evidence, it was established that they were searching the deceased and ultimately they found her dead body in the village dam. The dead body was in a gunny bag, tied with stones, so as to keep it in drowned condition. Except the above, no fact legally admissible in evidence was deposed by these witnesses. Pongu (PW-7) says that Faguni Bai (PW-2) had told them that the deceased was assaulted by the appellant, but Faguni Bai turned hostile. The evidence of other witnesses is also hearsay. Therefore, nothing substantial was proved from the evidence of above witnesses and the finding recorded by the learned Sessions Judge in Para-19 that on the evidence of above witnesses, it was proved that the deceased was assaulted by the appellant and her dead body was put in gunny bag and then it was thrown in the dam is totally perverse and based on no

evidence of record.

6. So far as evidence of discovery and seizure is concerned, we find that the discovery statement (Ex.-P/5) was recorded at about 17.00 hours on 2.5.2004 and seizure of steel drum was made at about 17.30 hours on the same day. Biran Singh (PW-3) deposed in Para-7 of his examination-in-chief that the water drum was seized by the police at about 9-10.00 a.m. The above evidence of Biran Singh (PW-3) creates doubt on the discovery memo as also the seizure in consequence thereof, because they are shown to be prepared at 17-17.30 hours. If the article itself was recovered in the morning, the discovery and seizure, thereof, in the evening was certainly false and, thus, of no assistance to the prosecution.

7. Mohd. Rafiq (PW-13) is the witness of identification of the steel drum. He deposed that he had conducted identification. The identification memo is Ex.-P/14. He admitted in cross-examination that there was only one water drum while conducting the identification. He further admitted that the identification was conducted in presence of the police. He also admitted that one lady had identified the drum, but he does not know the lady. We find from the identification memo that the two persons namely- Biran Singh (PW-3) and Nirasiya Bai daughter of Biran Singh had participated in the identification. As Mohd. Rafiq (PW-13) depose that some lady had identified the article, this shows that Biran Singh (PW-3) did not identify the article. From the record, we find that Nirasiya Bai was not examined by the prosecution. Therefore, the identification of the article also vitiates.

8. For the foregoing reasons, we are unable to sustain the conviction of the appellant on the above evidence led by the prosecution. We are of the view that the learned Sessions Judge fell into error while convicting the appellant u/ss 302 & 201 IPC on the above set of evidence which was insufficient to hold him guilty of the above offences. In the result, the appeal is allowed. The conviction and sentences awarded to the appellant u/ss 302 & 201 are set-aside. The appellant is acquitted of the charges framed against him. It is stated that the appellant is in jail since 3.5.2005, as even after suspending his sentences, he could not furnish bail bonds. He be released, forthwith, if not required in any other case.